

Internal Revenue Service
memorandum

CC:INTL:CONI-105460-97
Br1:DAAlvarez:WEWilliams

date: MAY 9 1997
to: Taxpayer Advocate (International)

from: Senior Technical Reviewer CC:INTL:Br1
Associate Chief Counsel (International)

subject: Congressional Inquiry: Title III of the National Prohibition Act

This is in response to your memorandum dated March 11, 1997, requesting our assistance in responding to a congressional inquiry from a constituent of Congressman George Radanovich of California.

Specifically, you requested that we provide information to enable you to respond to questions 3a and 3b of the constituent's letter as follows:

- (a) Which internal revenue laws 'generally located at 26 USCS §1 et seq.' are relevant to enforcement of Title III of the National Prohibition Act? and
- (b) Is Title III of the National Prohibition Act still enforceable in the United States or is the enforcement restricted to Puerto Rico and the Virgin Islands?

We have researched the constituent's request and provide the following information.

The Eighteenth Amendment to the Constitution, effective January 29, 1919, provided in relevant part that:

[t]he manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited. [Emphasis added.]

The Eighteenth Amendment gave Congress and the States concurrent jurisdiction to enact legislation to enforce the Amendment.

PMTA: 00147

The National Prohibition Act (the "Act"), Act Oct. 28, 1919, ch 85, 41 Stat. 305, as amended and supplemented, was passed pursuant to the authorization in the Eighteenth Amendment. The Act consisted of Titles I, II, and III set forth in chapters 1 (General Provisions), 2 (Prohibition of Intoxicating Beverages), 2A (Beer, Ale, Porter and Similar Fermented Liquor), 3 (Industrial Alcohol), and 4 (Penalties) of U.S.C. Title 27.

The Twenty-First Amendment to the U.S. Constitution, effective December 5, 1933 repeals the Eighteenth Amendment and provides in section 2 that

[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.
[Emphasis added.]

As a result of the adoption of the Twenty-First Amendment to the Constitution, certain provisions of the Act set forth in Titles I and II, as amended and supplemented, that were dependent upon the Eighteenth Amendment became inoperative. See United States v. Chambers, 291 U.S. 217 (1934). Titles I and II of the 1919 Act were repealed by the Liquor Law Repeal and Enforcement Act, P.L. 347 (Aug. 27, 1935). However, Title III of the Act pertaining to Industrial Alcohol, Chapter 3, sections 71 to 75, 78 to 81, 83 to 88, and 90 remained in effect; was amended by the Liquor Law Repeal and Enforcement Act; and was incorporated into various sections of the Internal Revenue Code of 1939 and subsequently into the Internal Revenue Code of 1986 (See U.S.C. Title 26, Internal Revenue Code Table I preceding section 1 for a breakdown of Title III as incorporated into the Code of 1939 and 1986). In addition, Title III and all provisions of the internal revenue laws relating to the enforcement thereof, were extended and made applicable to the Virgin Islands (Act of June 26, 1936, ch. 830, Title III, §329(c)-I.R.C. §5314(b)) and to Puerto Rico. (Act of June 26, 1936, ch. 830, Title III, § 329 (c)-I.R.C. §5314(a)). See U.S.C. Title 48, §§ 1402 and 734a respectively.

The following Table reflects the codification of Title III, Act of 1919 to Title 26 of the Internal Revenue Code.

Title III Act of 1919 Section	Title 26 (Internal Revenue Code of 1986) Section
Section 71	5002(a)
Section 72	5171(a), 5171(b), 5172, 5173(a), (b)
Section 73	5171(a), (b), 5172, 5173(a), (c) 5178(a)(3)(A), (B), 5201(a), 5206(a)
Section 74	5212, 5223(a)
Section 74(a)	5222(b), 5412
Section 74(b)	5211, 5212, 5213
Section 75	5004(a)(1), 5005(c)(Rev. See 5005(a) (b)(1), (c)(1))
Section 78	5178(a)(2)(A), 5201(a)
Section 79	5113(a), 5173(c), 5201(a), (c), 5204(c), 5243, 5312(c)
Section 80	5171(a), (b), 5172, 5173(a), (c), 5178(a) 5241, 5242, 5273(b)(1) 5214(a), 5241, 5242, 5273(b)(1), (2)(d) 5502
Section 81	5214(a), 5241, 5242, 5273(b)(1), (2), (d), 5002(a)
Section 83	5171, 5172, 5173(a), 5178(a)(1)(A), 5201(a), (b), 5207(a), (c), (d), 5211, 5223(a), 5235, 5273(b)(1), (2), (d), 5275, 5312(b))

cont'd

Section 84	5011(c) (repealed)
Section 85	5687
Section 86	5004(a)(1), 5005(c) (Rev. See 5005 (a), (b)(1), (c)(1))
Section 87	5688
Section 88	5317(a) (repealed)
Section 90	5314(a)(2)

Therefore, with respect to question 3a and 3b, the internal revenue laws that are relevant to the enforcement of Title III are set forth in the Internal Revenue Code under Subtitle E, Chapter 51, in the sections described in the Table above and the provisions therein are applicable to the United States and all territory subject to its jurisdiction which includes the Virgin Islands and Puerto Rico.

We hope this is responsive to your request. We have attached the relevant provisions of Title 27, Title 48, the 18th and the 21st Amendments to the Constitution related to the questions raised by the constituent. If you have any questions or require additional information on this subject, please call.


W.E. WILLIAMS

Attachments:
As stated